

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-4 and 11, drawn to a composition comprising a triazolopyrimidine derivative of the formula I and a dithiocarbamate derivative.

Group II, claims 5-9 and 11, drawn to method of using the composition for controlling rice-pathogenic harmful fungi.

Group III, claim 10 drawn to a seed comprising the composition.

It is noted claim 11 is use claim, which is non-statutory. Applicant is required to cancel or amend said claim to be either product or process claims in accordance with Group I or II.

The inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The instant claim 1 lacks inventive step over PCT application WO 98/46607 in view of Fishbein (J Toxicol Environ Health, vol. 1 (5), p713-735, 1976). WO 98/46607 teaches a triazolopyrimidine derivative of formula I having selective fungicidal activity (abstract and claim 1). In addition, Fishbein teaches

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a variety of dithiocarbamate derivatives as recited in the instant claims as fungicides (abstract).

A person of ordinary skill in the art at the time of the invention was made would have been motivated to combine two known fungicides for the cumulative effect. Thus, the instant claim 1 does not share the same or corresponding special technical feature with the other groups. As such, unity between the above Groups I, II and III is broken. A copy of PCT application WO 98/46607 is not supplied since applicant provided it in an IDS.

Species Election

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

If applicant selects Group I, II, or III, one specific species from different dithiocarbamate derivatives as set forth in claim 1 should be selected to be fully responsive. The following is a list of dithiocarbamate derivatives:

manganese-ethylenebis(dithiocarbamate)zinc complex (II.1),

manganese-ethylenebis(dithiocarbamate) (II.2),

zinc ammoniate-ethylenebis(dithiocarbamate) (II.3),

zinc-ethylenebis(dithiocarbamate) (II.4) and

bis(dimethylthiocarbamoyl)disulfide (II.5)

The species listed above do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features

because they are distinct species which have different chemical or physical properties. In addition, Fishbein teaches the species (abstract).

The following claims are generic: claims 1 -4 and 11 for Group I, claim 5-9 and 11 for Group II, and claim 10 for Group III.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double

patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BONG-SOOK BAEK whose telephone number is 571-270-5863. The examiner can normally be reached on 8:00-5:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on 571-272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 4161

Bbs

/Patrick J. Nolan/
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